

Proposed Rules – Chapter 390-18 WAC
For public hearing and possible permanent adoption on April 27, 2006, including
proposed staff amendments on pages 2 and 9.

AMENDATORY SECTION (Amending WSR 03-12-034, filed 5/29/03, effective 6/29/03)

WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures. ~~(1) For the purposes of chapter 42.17 RCW ((42.17.510)) and ((this rule, "sponsor" means the candidate, political committee or other person paying for the advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor))~~ Title 390 WAC:

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" is defined in RCW 42.17.020.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17 RCW and as defined in RCW 42.17.020 or 42.17.100.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, ~~((it is unnecessary to include that contributor's name as))~~ that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17 RCW and Title 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). However, printed advertising undertaken as an independent expenditure ~~((as defined in RCW 42.17.020))~~ or electioneering communication shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and provide this information in an area set apart from any other printed matter. Political committees~~((, other than a~~

~~bona fide political party,))~~ that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) (~~Political~~) Advertising consisting of more than one page but intended to be presented as a single item ~~((i.e.))~~ e.g., 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) (~~Political~~) Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or (~~television political~~) television advertising shall be clearly spoken or identified as required in RCW 42.17.510. (~~However,~~)

(a) All radio, telephone and television (~~political~~) advertising undertaken as an independent expenditure as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(b) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(c) Political committees(~~, other than a bona fide political party,))~~ that sponsor independent expenditure or electioneering communication radio and television (~~political~~) advertising are required to clearly speak or otherwise identify the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

Brief Explanation: This rule amendment incorporates references to electioneering communications and will assist sponsors in properly identifying their communications. It also clarifies that telephone advertising undertaken as an independent expenditure is subject to the "Notice to Voters" and "Top Five Contributors" provisions of law.

AMENDATORY SECTION (Amending WSR 99-12-067, filed 5/27/99, effective 6/27/99)

WAC 390-18-020 ((Political)) Advertising--Political party identification. (1) According to RCW 42.17.510, sponsors of ((political)) advertising supporting or opposing a candidate ((for partisan office)) who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(2) According to RCW 42.17.510, sponsors of electioneering communications identifying a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(3) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors ((of political advertising)) to identify a candidate's political party.

Brief Explanation: The proposed rule amendments implement statutory changes made by ESSB 5034 regarding party identification in advertising referencing a candidate for partisan office.

AMENDATORY SECTION (Amending WSR 02-12-007, filed 5/23/02, effective 6/23/02)

WAC 390-18-025 ((Political)) Advertising--Identification of "top five contributors." (1) For purposes of RCW 42.17.510 (2), (4) and (5), "top five contributors" means the five persons, as defined in RCW 42.17.020, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the ((political)) advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

(2)(a) For independent expenditure advertisements, the "top five contributors" identification requirement of RCW 42.17.510 applies to all political committees that make independent expenditures, including continuing political committees((7

~~required to register and report under)) and out-of-state political committees subject to chapter 42.17 RCW other than a bona fide political party committee.~~

(b) For electioneering communications, the "top five contributors" identification requirement of RCW 42.17.510 applies to all political committees that make electioneering communications including continuing political committees and out-of-state political committees subject to chapter 42.17 RCW.

(3) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures for advertisements supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17.510(~~((+2))~~) and this section.

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used (~~((to support or oppose))~~) with respect to a different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.

Brief Explanation: *The proposed amendments to this rule specify when sponsors of independent expenditure advertising and electioneering communications must identify their top five contributors.*

NEW SECTION

WAC 390-18-027 Medium that does not include a visual image. (1) For electioneering communications identifying sponsors and top five contributors as required by RCW 42.17.510 a "medium that does not include a visual image" means radio.

(2) For independent expenditures identifying sponsors and top five contributors as required by RCW 42.17.510 a "medium that does not include a visual image" means radio or telephone transmissions.

Brief Explanation: *The proposed rule clarifies RCW 42.17.510 by explaining what is meant by a "medium that does not include a visual image."*

AMENDATORY SECTION (Amending WSR 04-12-057, filed 5/28/04, effective 6/28/04)

WAC 390-18-030 ((Political)) Advertising--Exemptions from identification. ((+1)) Pursuant to RCW 42.17.510((+4)) (6), the following forms of ((political)) advertising need not include the sponsor's name and address, the "notice to voters" or the "top five contributors" information as otherwise required by RCW 42.17.510 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers--size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less, noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, ((political-tickers,)) pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers--size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund raisers, water towers, whistles, yard signs--size 4' x 8' or smaller, yo-yos, and all other similar items.

((2) Political tickers are text messages that scroll across a television screen during scheduled programming.))

Brief Explanation: With adoption of this rule amendment, political tickers will be subject to the law's sponsor identification requirements, including "Notice to Voters" and "Top Five Contributors."

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

WAC 390-18-040 Use of the terms "reelect," "retain," and "return." (1) The term "reelect" when used in ((a-political)) an advertisement represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

(2) The term "reelect" may be used in ((a-political)) an advertisement by a nonincumbent candidate who has previously been elected to the office being sought provided that in the

same advertisement it is clearly stated that the candidate is not the incumbent.

(3) The term "retain" in ((~~a political~~)) an advertisement represents that the candidate is the incumbent but does not imply that the candidate attained the office by election.

(4) The term "return" in ((~~a political~~)) an advertisement represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was attained by election.

(5) Whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedures, the candidate holding an office in the affected district or political subdivision may, in ((~~a political~~)) an advertisement, use the term "reelect," "retain" or "return," as appropriate, if the candidate is seeking the same office in the revised district or political subdivision.

(6) Stating the office sought (e.g., "mayor") by a candidate in a political advertisement without expressly stating the candidate is seeking election to the office (e.g., "for mayor"; "Elect Smith Mayor") represents that the candidate presently holds that office.

Brief Explanation: *Technical amendments consistent with proposed changes elsewhere in chapter 390-18 WAC.*

AMENDATORY SECTION (Amending WSR 99-12-068, filed 5/27/99, effective 6/27/99)

WAC 390-18-050 Commercial advertisers--Public inspection of records. (1) Pursuant to RCW 42.17.110, any person, without reference to or permission from the public disclosure commission, is entitled to inspect the ((~~political~~)) advertising records of a commercial advertiser.

(2) No commercial advertiser shall be required to make available for public inspection information regarding ((~~political~~)) advertising prior to the time when the advertisement has initially received public distribution or broadcast.

(3) The documents and books of account that must be maintained open for public inspection pursuant to RCW 42.17.110(1) are:

(a) The name of the candidate or ballot measure supported or opposed;

(b) The name and address of the person who sponsored the advertising;

(c) The total cost of the advertising, how much of that

amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

(4) In addition to subsection (3) of this section and pursuant to RCW 42.17.110 (1)(b), the documents and books of account open for public inspection must include a description of the major work components or tasks, as specified in (a) through (f) of this subsection, that were required to provide the advertising services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

Brief Explanation: *The proposed change means that persons wanting to review commercial advertiser records regarding electioneering communications may do so in the same manner permitted for other political ads.*

NEW SECTION

WAC 390-18-060 Electioneering communication reporting threshold and sponsors. (1) A "sponsor of an electioneering communication" is defined in RCW 42.17.020(43).

(2) For the purposes of RCW 42.17.020 (20)(c), an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

(a) Identifies the same candidate in one or more communications satisfying RCW 42.17.020 (20)(a) and (b) or commission rules;

(b) Is made by the same sponsor of one or more of the communications;

(c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market or aggregate value of \$5,000 or more; and

(d) Is not a communication exempted from reporting under RCW 42.17.020(21) or commission rule.

(3) When the electioneering communication or communications - including radio or television transmissions, mailings, billboards, newspapers and/or periodicals - reach the \$5,000 threshold, the sponsor shall electronically report to the commission as required by RCW 42.17.565 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.

(4) Once the \$5,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17.565 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the \$5,000 threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of PDC Form C-6, a prorated portion of independent expenditure and electioneering communications expenditures shall be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration shall be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

(7) **Examples.** The following is a nonexclusive list of examples of reportable activities for electioneering communications:

(a) **Single sponsor, single ad.** Sponsor A pays for an electioneering communication identifying Candidate 1 and the communication has a fair market value of \$5,000 or more. The electioneering communication is reportable by Sponsor A.

(b) **Single sponsor, multiple ads.** Sponsor A pays for three electioneering communications identifying Candidate 1, and the communications have an aggregate fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications are reportable within 24 hours of the third communication being first broadcast, transmitted,

erected, distributed or otherwise published. All subsequent electioneering communications by Sponsor A identifying Candidate 1 are reportable.

(c) **Multiple sponsors, multiple ads.** Sponsors A and B jointly agree to pay for three electioneering communications identifying Candidate 1, and the communications have a total fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications become reportable when the third communication is sponsored. All subsequent electioneering communications by Sponsors A and/or B identifying Candidate 1 are reportable.

(d) **Multiple sponsors, multiple ads.** Sponsors A and B have separately paid for an electioneering communication identifying Candidate 1, and each communication has a fair market value of \$4,000. Those communications are not reportable because they have not yet reached the \$5,000 threshold. However, Sponsors A and B then jointly agree to pay for another electioneering communication identifying Candidate 1, and the communication has a fair market value of \$1,000. Now the \$5,000 reporting threshold has been reached and within 24 hours of the jointly sponsored communication being published, that communication and prior separately sponsored communications identifying Candidate 1 are reportable by Sponsors A and B. All subsequent electioneering communications by Sponsors A and/or B identifying Candidate 1 are reportable.

(e) **Multiple sponsors, multiple ads.** Sponsors A, B and C jointly plan and agree to pay for a series of electioneering communications identifying Candidate 1. They decide that Sponsor A will pay for the first ad, Sponsor B will pay for the second ad, and Sponsor C will pay for the third ad. Each ad has a fair market value of \$4,999. Because A, B and C are acting in concert as one sponsoring entity for the electioneering communications, upon the publishing of the second ad the \$5,000 threshold is met and A, B and C have an obligation to report the electioneering communications within 24 hours. Likewise, A, B and C have an obligation to report the third electioneering communication within 24 hours of its publication. All subsequent electioneering communications by Sponsors A, B and/or C identifying Candidate 1 are reportable.

(f) **Prorating an ad.** If 80% of one or more electioneering communications with a fair market value of \$7,000 relates to a message or messages about Candidate 1, and the remaining 20% relates equally to two ballot propositions, the communication is reportable by the sponsor or sponsors because the \$5,000 threshold has been met. All subsequent electioneering communications identifying Candidate 1 are reportable.

Brief Explanation: The rule provides guidance to sponsors of electioneering communications about their reporting responsibility. The additional technical amendment is not a substantive change.